
**APPEALS BOARD
UTAH LABOR COMMISSION**

LINDY K. DAVIS,

Petitioner,

vs.

**ROLLING RUBBER, INC. and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0392

Lindy K. Davis asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Mr. Davis's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

On April 25, 2005, Mr. Davis filed an application for hearing with the Labor Commission to compel Rolling Rubber, Inc. and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Rolling Rubber") to pay workers' compensation benefits for injuries Mr. Davis allegedly suffered from a work accident at Rolling Rubber on November 8, 2000. At the evidentiary hearing on his application, Mr. Davis attempted to withdraw his claim. Judge Sessions denied that request. Rolling Rubber then asked Judge Sessions to dismiss Mr. Davis's claim "with prejudice" because Mr. Davis was unable to produce any medical opinion that his current problems were caused by his work accident. On April 12, 2006, Judge Sessions issued his decision granting Rolling Rubber's motion to dismiss with prejudice.

On May 11, 2006, Mr. Davis submitted a motion for review challenging Judge Sessions' decision on four grounds: 1) the decision's findings are incomplete and inadequate; 2) Mr. Davis had the right to withdraw his claim at any time prior to hearing; 3) Judge Sessions erred in concluding that Rolling Rubber's consulting physicians did not lose some of Mr. Davis's radiological studies; and 4) the loss of those radiological studies prevented Mr. Davis from having them reviewed by his own medical expert. However, other than listing each of the foregoing grounds for review, Mr. Davis's motion provided no supporting explanation or argument. On May 19, 2006, Mr. Davis submitted an additional memorandum that did provide some argument in support of the points identified in his motion for review.

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On June 7, 2006, Rolling Rubber responded to Mr. Davis's arguments. Additionally, Rolling Rubber asserted that Mr. Davis was required to submit his arguments as part of his motion for review and was not entitled to submit those arguments in a subsequent memorandum.

DISCUSSION

As a threshold matter, the Appeals Board considers Rolling Rubber's contention that Mr. Davis was obligated to submit his arguments in support of his motion for review as part of that motion for review, rather than submitting the arguments later in a separate memorandum. The Appeals Board notes the nearly universal practice in proceedings at the Labor Commission for parties requesting review of an ALJ's decision to submit their arguments as part of their motions for review. However, neither the Utah Administrative Procedures Act nor the Utah Labor Commission Act explicitly requires this practice, and the Labor Commission's own rules do not address the issue. The Appeals Board will therefore consider the arguments Mr. Davis submitted in his memorandum.

Sufficiency of ALJ's decision. Mr. Davis argues that Judge Sessions' findings of fact are inadequate. However, Mr. Davis does not establish any specific factual errors in the decision. The central question before Judge Sessions was whether the evidentiary record contained any medical evidence that Mr. Davis's work accident at Rolling Rubber was the cause of the problems for which he claimed workers' compensation benefits. In light of this narrow factual issue and the absence of evidence on that issue, the Appeals Board concludes that Judge Sessions' findings are sufficient and correct.

Withdrawal of claim. Mr. Davis also argues that he had an unconditional right to withdraw his claim any time prior to hearing and that Judge Sessions erred in refusing to allow him to withdraw his claim in this matter. The Utah Labor Commissioner and this Appeals Board have previously considered and rejected this argument in previous cases. See *Willard v. Thurston Cable Construction*, Case No. 98-0560, and *Duran v. Shoney's Restaurant*, Case No. 04-0077, affirmed by the Utah Court of Appeals in *Duran v. Labor Commission et al.*, 182 P. 3d 931 (Utah App. 2008). Consequently, discretion to grant Mr. Davis's request to withdraw his claim was vested in Judge Sessions, who denied the request based on Mr. Davis's failure to take reasonable steps to prepare his claim for hearing. The Appeals Board concurs with Judge Sessions' judgment and also notes the "eleventh-hour" nature of Mr. Davis's attempt to withdraw and the potential prejudice and cost to Rolling Rubber. See *Duran*, 182 P.3d at 934. The Appeals Board therefore affirms Judge Session's denial of Mr. Davis's request to withdraw his claim.

Loss of radiological studies. In the third and fourth points of his motion for review, Mr. Davis argues that Rolling Rubber's medical consultant lost certain radiological studies, thereby preventing Mr. Davis from obtaining the medical opinion necessary to support his claim. However, Judge Sessions concluded that Rolling Rubber's consultant was not responsible for the loss of the studies. In any event, Mr. Davis knew the studies were missing well in advance of the evidentiary

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hearing on his claim. He therefore had a reasonable opportunity to obtain other supporting medical evidence or take other appropriate action. Under these circumstances, the Appeals Board does not view the unavailability of the studies as depriving Mr. Davis of an opportunity for a fair hearing.

Summary. Having considered the arguments raised in Mr. Davis's motion for review and amplified in his subsequent memorandum, the Appeals Board concludes that Judge Sessions' findings and decision are sufficient. The Appeals Board also concludes that Judge Sessions properly denied Mr. Davis's request to withdraw his application. Finally, the Appeals Board finds that, despite the loss of certain radiological studies, Mr. Davis had a fair and reasonable opportunity to present his case. In the absence of any medical proof that his work accident at Rolling Rubber caused his current medical problems, Judge Sessions properly denied Mr. Davis's claim with prejudice.

ORDER

The Appeals Board affirms Judge Sessions' decision. It is so ordered.

Dated this 21st day of January, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.